

SERVED: October 18, 2005

NTSB Order No. EM-202

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 17th day of October, 2005

_____)	
THOMAS H. COLLINS,)	
Commandant,)	
United States Coast Guard,)	
)	
)	
v.)	Docket ME-178
)	
)	
MICHAEL G. DeSIMONE,)	
)	
Appellant.)	
_____)	

OPINION AND ORDER

Appellant, pro se, seeks review of an August 18, 2005, decision of the Commandant (acting, by delegation, through the Chief, Investigations Division) affirming Coast Guard Administrative Law Judge Walter J. Brudzinski's July 18, 2005, order denying appellant's application for a temporary license.¹ We deny the appeal.

Appellant's mariner's license was revoked by the Coast Guard

¹ Copies of the law judge's order denying appellant's application for a temporary license, and the decision of the Commandant affirming the law judge's order, are attached.

on July 8, 2005, after an administrative hearing before a Coast Guard law judge; in that proceeding, it was determined that appellant was convicted of violating a dangerous drug law of the State of New York, in 2002, in contravention of statutory requirements for holding a mariner's license.² Our task now is not to examine the merits of appellant's appeal of the revocation of his certificate, but, rather, to review the Coast Guard's denial of his application for a temporary certificate.³

Coast Guard regulations state that any, "person who has appealed from a decision suspending outright or revoking a license, certificate or document, except for revocation resulting from an offense enumerated in [46 C.F.R. § 5.59], may file a written request for a temporary license, certificate or document."⁴ 46 C.F.R. § 5.707(a). The relevant provision of 46 C.F.R. § 5.59 states that revocation is mandatory for those circumstances where a license holder, "has been convicted for a

² 46 U.S.C. § 7704(b) states: "If it is shown at a hearing under this chapter that a holder of a license, certificate of registry, or merchant mariner's document issued under this part, within 10 years before the beginning of the proceedings, has been convicted of violating a dangerous drug law of the United States or of a State, the license, certificate, or document shall be suspended or revoked."

³ Appellant, appearing pro se, filed a notice of appeal of the Commandant's denial of his application for a temporary license on August 23rd, and, receiving no further brief, we have treated his 2-page appeal notice as his brief as well. The Coast Guard filed a reply brief on September 22nd. We give priority attention to an appeal of a denial of a temporary certificate because, in effect, it is analogous to a stay proceeding.

⁴ Temporary licenses, "provide that they expire not more than six months after issuance or upon service of the Commandant's decision on appeal, whichever occurs first." 46 C.F.R. § 5.707(d).

violation of the dangerous drug laws, whether or not further court action is pending, and such charge is found proved." 46 C.F.R. § 5.59(b).⁵

The law judge and the Commandant both explained in their orders denying appellant's application for a temporary license that appellant cannot apply for a temporary certificate pending his appeal on the merits of the revocation of his license, because that revocation was based on appellant's conviction of a dangerous drug law. See 46 C.F.R. § 5.707(a).

Appellant provides us no basis for overturning the

⁵ The regulation, in its entirety, states:

Sec. 5.59 Offenses for which revocation of licenses, certificates or documents is mandatory.

An Administrative Law Judge enters an order revoking a respondent's license, certificate or document when—

(a) A charge of misconduct for wrongful possession, use, sale, or association with dangerous drugs is found proved. In those cases involving marijuana, the Administrative Law Judge may enter an order less than revocation when satisfied that the use, possession or association, was the result of experimentation by the respondent and that the respondent has submitted satisfactory evidence that he or she is cured of such use and that the possession or association will not recur.

(b) The respondent has been a user of, or addicted to the use of, a dangerous drug, or has been convicted for a violation of the dangerous drug laws, whether or not further court action is pending, and such charge is found proved. A conviction becomes final when no issue of law or fact determinative of the respondent's guilt remains to be decided.

Commandant's affirmance of the law judge's denial of his application for a temporary license.⁶ On this record, it was found by the law judge that appellant was convicted by the State of New York for possession of marijuana in 2002. Marijuana appears to be a "dangerous drug" as that term is used in 46 C.F.R. § 5.707(a).⁷ Therefore, the language of section 5.707(a) renders him ineligible to apply for a temporary certificate pending review by the Commandant of his appeal on the merits of his revocation hearing.

ACCORDINGLY, IT IS ORDERED THAT:

1. The appellant's appeal is denied; and
2. The decision of the Commandant, affirming the law judge's denial of appellant's application for a temporary license, is affirmed.

ROSENKER, Acting Chairman, and ENGLEMAN CONNERS and HERSMAN, Members of the Board, concurred in the above opinion and order.

⁶ Appellant cites two decisions by the Commandant, Manley (Appeal Decision 2388) and Cooper (Appeal Decision 2168), wherein the Commandant exercised leniency in an appeal of a revocation order based on a conviction for marijuana possession. This argument goes to the merits of the Coast Guard's case, which are not presently before us, and, therefore, we do not consider it germane to the narrow issue of whether the Coast Guard acted inappropriately in denying appellant's application for a temporary license.

⁷ We note that we were forced to discern on our own whether this was the case, for nothing in the Coast Guard documents in the record before us provided the answer to this critical issue. See 46 U.S.C.A. § 2101(8)(a) (defining "dangerous drug" by reference to the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)); 21 U.S.C.A. § 802(6) (defining "controlled substance" as a "drug or other substance ... included in schedule I, II, III, IV, or V of Part B of this subchapter"); and 21 U.S.C.A. § 812, "Schedules of controlled substances" (defining marijuana as a Schedule I controlled substance).